

THE HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

JENNIFER MILLER, EMAD AL-KAHLOUT,  
HAMADY BOCUM, CHRISTOPHER CAIN,  
GARY GLEESE, JOSE GRINAN, KIMBERLY HALO,  
CLARENCE HARDEN, KELLY KIMMEY, JUMA  
LAWSON, STEVEN MORIHARA, SHARON  
PASCHAL, and PHILIP SULLIVAN, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

AMAZON.COM, INC., and AMAZON  
LOGISTICS, INC.,

Defendants.

Case No. 2:21-cv-00204-BJR

**PLAINTIFFS' MOTION TO LIFT STAY**

**I. INTRODUCTION**

This Court denied Amazon's motion to compel arbitration, holding that Amazon Flex workers are exempt from the Federal Arbitration Act and relying on *Rittmann v Amazon.com, Inc.*, 971 F.3d 904 (9<sup>th</sup> Cir. 2020). Defendants have sought interlocutory appeal at the Ninth Circuit (the same court that decided *Rittmann*). On March 29, 2022, this Court granted Amazon's motion to stay this action pending resolution of the Ninth Circuit appeal because of a case pending at the Supreme Court, *Southwest Airlines Co. v. Saxon*, 142 S. Ct. 638 (2021) (cert. granted). Earlier this week, the Supreme Court decided *Saxon*, holding that a ramp supervisor for Southwest Airlines who "frequently loads and unloads cargo on and off airplanes that travel

1 in interstate commerce . . . belongs to a ‘class of workers engaged in foreign or interstate  
 2 commerce” and was therefore exempt from the Federal Arbitration Act. \_\_\_ S. Ct. \_\_\_, 2022 WL  
 3 1914099, at \*8 (Jun. 6, 2022).

4 Because *Saxon* has been decided in favor of the workers and does not upset the Ninth  
 5 Circuit’s decision in *Rittmann*, Plaintiffs respectfully request that the stay in this case be lifted.<sup>1</sup>

## 6 II. ARGUMENT

7 The stay should be lifted because: (1) Amazon’s argument in favor of the stay and this  
 8 Court’s decision was based on the possibility that the Supreme Court’s decision in *Saxon* would  
 9 call into question the Ninth Circuit’s decision in *Rittmann*; and (2) the *Saxon* decision has now  
 10 issued, and it bolsters the *Rittmann* decision and this Court’s decision denying Amazon’s motion  
 11 to compel arbitration.

12 First, Amazon relied heavily on *Saxon* in its motion for a stay, arguing: “With the  
 13 granting of Southwest Airlines’s cert petition, there is a very real possibility that—while the  
 14 appeal in this action is pending—the Supreme Court will vindicate Amazon’s . . . interpretation  
 15 of the exemption or otherwise cast doubt on the *Rittmann* decision on which this Court heavily  
 16 relied.” Defs.’ Mot. for a Stay at 2 (Doc. 50). Explaining further, Amazon explained that, in  
 17 *Saxon*, “[t]he Supreme Court is thus likely to decide whether the Ninth Circuit in *Rittmann*, like  
 18 the Seventh Circuit in *Saxon*, was correct to rule that the FAA’s exemption encompasses classes  
 19 of workers who do not cross state lines.” *Id.* at 6.

20 This Court granted the stay, holding that the possibility of an opinion in *Saxon* that cast  
 21 doubt on *Rittmann* “justifies a stay in this case.” Ct. Ord. on Mot. to Stay at 3 (Doc. 64). For this  
 22 reason, the Court held that Amazon satisfied the first (and most important) element in favor of  
 23 a stay, likelihood of success. “[I]f the Supreme Court adopts Southwest’s interpretation of the  
 24 exemption, this Court’s reliance on *Rittmann* may no longer support the denial of Defendants’  
 25 motion to compel.” *Id.*

26 \_\_\_\_\_  
 27 <sup>1</sup> Under the current schedule, Amazon’s opening brief to the Ninth Circuit is due on July 27,  
 2022, and the appeal will not be fully briefed until September 2022.

1 The Supreme Court has now issued its decision in *Saxon*. The Supreme Court did not  
 2 “adopt[] Southwest’s interpretation of the exemption.” *Id.* Nor did it “cast doubt on the  
 3 *Rittmann* decision.” Defs.’ Mot. for a Stay at 2 (Doc. 50). Instead, the Court held that a ramp  
 4 supervisor who loaded and unloaded cargo on airplanes traveling across borders belonged to a  
 5 “[c]lass of workers engaged in foreign or interstate commerce,” even though the workers  
 6 themselves did not cross borders. 2022 WL 1914099, at \*8. The Court held: “cargo loaders  
 7 plainly do perform ‘activities within the flow of interstate commerce’ when they handle goods  
 8 traveling in interstate and foreign commerce, either to load them for air travel or to unload  
 9 them when they arrive.” *Id.*

10 Notably, moreover, the Supreme Court cited *Rittmann* with approval in the *Saxon*  
 11 decision. In noting that “the answer will not always be so plain when the class of workers  
 12 carries out duties further removed from the channels of interstate commerce or the actual  
 13 crossing of borders,” the Court compared *Rittmann* with *Wallace v. GrubHub Holdings, Inc.*, 970  
 14 F.3d 798, 803 (7<sup>th</sup> Cir. 2020). 2022 WL 1914099, at \*5 n.2. In *Rittmann*, the Court noted, the  
 15 Ninth Circuit held that “a class of ‘last leg’ delivery drivers falls within § 1’s exemption,”  
 16 whereas the Seventh Circuit held in *Wallace* that “food delivery drivers do not” fall within § 1  
 17 exemption. *Id.* This reference to *Rittmann* further confirms that *Saxon* affirmed and did not cast  
 18 doubt upon the Ninth Circuit’s decision in *Rittmann* and, by extension, this Court’s decision on  
 19 Amazon’s motion to compel arbitration.

### 20 III. CONCLUSION

21 Now that the Supreme Court has decided the *Saxon* case, and the Ninth Circuit’s  
 22 decision in *Rittmann* remains undisturbed (and, indeed, bolstered), this Court should lift the  
 23 stay and allow litigation to proceed in this matter while Amazon’s interlocutory appeal is  
 24 pending.  
 25  
 26  
 27

IV. CERTIFICATION OF CONFERRAL

I certify that, pursuant to the Court's standing order, my co-counsel Hillary Schwab conferred with Michael Kenneally, counsel for Amazon on June 10, 2022. Mr. Kenneally told Ms. Schwab that Amazon opposes this motion.

RESPECTFULLY SUBMITTED AND DATED this 10th day of June, 2022.

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